



General Assembly

January Session, 2013

Raised Bill No. 1165

LCO No. 5478



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

AN ACT CONCERNING DIVERSIONARY PROGRAMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) If a person has been
2 determined indigent and eligible for representation by a public
3 defender, who has been appointed pursuant to section 51-296 of the
4 general statutes, the court shall waive all application and program fees
5 for the following:

6 (1) The community service labor program established pursuant to
7 section 53a-39c of the general statutes, as amended by this act;

8 (2) The pretrial program for accelerated rehabilitation established
9 pursuant to section 54-56e of the general statutes, as amended by this
10 act;

11 (3) The pretrial alcohol education program established pursuant to
12 section 54-56g of the general statutes;

13 (4) The pretrial drug education program established pursuant to
14 section 54-56i of the general statutes, as amended by this act;

15 (5) The school violence prevention program established pursuant to
16 section 54-56j of the general statutes, as amended by this act;

17 (6) The pretrial family violence education program established
18 pursuant to section 46b-38c of the general statutes;

19 (7) An examination for alcohol or drug dependency conducted
20 pursuant to section 17a-694 of the general statutes;

21 (8) The administration fee required upon the granting of a motion
22 for suspension of prosecution and order of treatment for alcohol or
23 drug dependency pursuant to section 17b-696 of the general statutes;
24 and

25 (9) All probation and program fees for any person sentenced to a
26 period of probation, including juvenile and youthful offender
27 probation sentences.

28 Sec. 2. (NEW) (*Effective from passage*) If a person has been
29 determined indigent and eligible for representation by a public
30 defender, who has been appointed pursuant to section 51-296 of the
31 general statutes, the court may not, as a condition of waiving fees
32 pursuant to section 52-259b of the general statutes, require that such
33 person complete a program of community service.

34 Sec. 3. Section 53a-39c of the general statutes is repealed and the
35 following is substituted in lieu thereof (*Effective from passage*):

36 (a) There is established, within available appropriations, a
37 community service labor program for persons charged with a violation
38 of section 21a-267 or 21a-279 who have not previously been convicted
39 of a violation of section 21a-267, 21a-277, 21a-278 or 21a-279. Upon
40 application by any such person for participation in such program the
41 court [may grant such application and (1) if such person has not
42 previously been placed in the community service labor program, the
43 court may either suspend prosecution and place such person in such

44 program or, upon a plea of guilty without trial where a term of
45 imprisonment is part of a stated plea agreement, suspend any sentence
46 of imprisonment and make participation in such program a condition
47 of probation or conditional discharge in accordance with section
48 53a-30; or (2) if such person has previously been placed in such
49 program, the court may, upon a plea of guilty without trial where a
50 term of imprisonment is part of a stated plea agreement, suspend any
51 sentence of imprisonment and make participation in such program a
52 condition of probation or conditional discharge in accordance with
53 said section 53a-30. No person may be placed in such program who
54 has twice previously been placed in such program.] shall, but only as
55 to the public, order the court file sealed provided such person states
56 under oath, in open court or before any person designated by the clerk
57 and duly authorized to administer oaths, under penalties of perjury,
58 that he or she has not on two prior occasions been placed in the
59 community service labor program. If the court grants the application,
60 the court shall suspend prosecution and place the applicant in the
61 community service labor program.

62 (b) There is established a community service labor program for a
63 person who has pled guilty to a violation of section 21a-267 or 21a-279
64 and who has not previously been convicted of a violation of 21a-277 or
65 21a-278. The court may, upon application of such person and upon a
66 plea of guilty without trial where a term of imprisonment is part of a
67 stated plea agreement, suspend any sentence of imprisonment and
68 make participation in such program a condition of probation or
69 conditional discharge in accordance with section 53a-30.

70 [(b)] (c) Any person who enters [such] a program established under
71 this section shall pay to the court a participation fee of two hundred
72 five dollars, except that no person may be excluded from any such
73 program for inability to pay such fee, provided (1) such person files
74 with the court an affidavit of indigency or inability to pay, (2) such
75 indigency is confirmed by the Court Support Services Division, and (3)
76 the court enters a finding thereof. All program fees collected shall be

77 deposited into the alternative incarceration program account.

78 ~~[(c)]~~ (d) Any person for whom prosecution is suspended and who is
 79 placed in the community service labor program pursuant to subsection
 80 (a) of this section shall agree to the tolling of the statute of limitations
 81 with respect to such crime and to a waiver of such person's right to a
 82 speedy trial. A pretrial community service labor program established
 83 under this section for persons for whom prosecution is suspended
 84 shall include a drug education component. If such person satisfactorily
 85 completes the program of community service labor to which such
 86 person was assigned, such person may apply for dismissal of the
 87 charges against such person and the court, on reviewing the record of
 88 such person's participation in such program and on finding such
 89 satisfactory completion, shall dismiss the charges. If the program
 90 provider certifies to the court that such person did not successfully
 91 complete the program of community service labor to which such
 92 person was assigned or is no longer amenable to participation in such
 93 program, the court shall unseal the file and enter a plea of not guilty
 94 for such person and immediately place the case on the trial list.

95 ~~[(d)]~~ (e) The period of participation in a community service labor
 96 program shall be a minimum of fourteen days for a first violation,
 97 ~~[and]~~ thirty days for a second violation and forty days for a third or
 98 subsequent violation involving a plea of guilty and conviction.

99 Sec. 4. Subsection (b) of section 54-56e of the general statutes is
 100 repealed and the following is substituted in lieu thereof (*Effective from*
 101 *passage*):

102 (b) The court may, in its discretion, invoke such program on motion
 103 of the defendant or on motion of a state's attorney or prosecuting
 104 attorney with respect to a defendant and if the court invokes the
 105 program, the court shall, but only as to the public, order the court file
 106 sealed, provided (1) [who,] the court believes [,] the defendant will
 107 probably not offend in the future, (2) [who] the defendant has no

108 previous record of conviction of a crime or of a violation of section 14-
 109 196, subsection (c) of section 14-215, section 14-222a, subsection (a) of
 110 section 14-224 or section 14-227a, and (3) [who] the defendant states
 111 under oath, in open court or before any person designated by the clerk
 112 and duly authorized to administer oaths, under the penalties of
 113 perjury, that (A) the defendant has never had such program invoked
 114 [in] on the defendant's behalf or that ten or more years have passed
 115 since the date that any charge or charges for which the program was
 116 invoked on the defendant's behalf have been dismissed by the court or,
 117 (B) with respect to a defendant who is a veteran, that the defendant has
 118 not had such program invoked [in] on the defendant's behalf more
 119 than once previously, provided the defendant shall agree thereto and
 120 provided notice has been given by the defendant, on a form approved
 121 by rule of court, to the victim or victims of such crime or motor vehicle
 122 violation, if any, by registered or certified mail and such victim or
 123 victims have an opportunity to be heard thereon. Any defendant who
 124 makes application for participation in such program shall pay to the
 125 court an application fee of thirty-five dollars. For the purposes of this
 126 section, "veteran" means a person who is [(A)] (i) a veteran, as defined
 127 in subsection (a) of section 27-103, or [(B)] (ii) eligible to receive
 128 services from the United States Department of Veterans Affairs
 129 pursuant to Title 38 of the United States Code.

130 Sec. 5. Section 54-56i of the general statutes is repealed and the
 131 following is substituted in lieu thereof (*Effective from passage*):

132 (a) There is established a pretrial drug education program for
 133 persons charged with a violation of section 21a-267 or 21a-279. The
 134 drug education program shall include a ten-session drug intervention
 135 program, a fifteen-session drug intervention program, [and] a
 136 substance abuse treatment program and community service for a
 137 person who previously had the program invoked on such person's
 138 behalf.

139 (b) Upon application by any such person for participation in such

140 program and payment to the court of an application fee of one
141 hundred dollars and a nonrefundable evaluation fee of one hundred
142 dollars, the court shall, but only as to the public, order the court file
143 sealed provided such person states under oath, in open court or before
144 any person designated by the clerk and duly authorized to administer
145 oaths, under penalties of perjury, that such person has never had such
146 program invoked [in] on such person's behalf or that ten or more years
147 have passed since the date that any charge or charges for which the
148 program was invoked on the person's behalf have been dismissed by
149 the court. A person shall be ineligible for participation in such pretrial
150 drug education program if such person has [previously] within the
151 previous ten years participated in the eight-session, ten-session or
152 fifteen-session drug education program, or substance abuse treatment
153 program established under this section. [or the pretrial community
154 service labor program established under section 53a-39c.] The
155 evaluation and application fee imposed by this subsection shall be
156 credited to the pretrial account established under section 54-56k.

157 (c) The court, after consideration of the recommendation of the
158 state's attorney, assistant state's attorney or deputy assistant state's
159 attorney in charge of the case, may, in its discretion, grant such
160 application. If the court grants such application, the court shall refer
161 such person to the Court Support Services Division for confirmation of
162 the eligibility of the applicant and to the Department of Mental Health
163 and Addiction Services, except that, if such person is a veteran, the
164 court may refer such person to the Department of Veterans' Affairs or
165 the United States Department of Veterans Affairs, as applicable, for
166 evaluation. For the purposes of this subsection and subsection (d) of
167 this section, "veteran" means a person who is (A) a veteran, as defined
168 in subsection (a) of section 27-103, or (B) eligible to receive services
169 from the United States Department of Veterans Affairs pursuant to
170 Title 38 of the United States Code.

171 (d) (1) Upon confirmation of eligibility and receipt of the evaluation
172 required pursuant to subsection (c) of this section, such person shall be

173 placed in the drug education program and referred by the Court
174 Support Services Division for the purpose of receiving appropriate
175 drug intervention services or substance abuse treatment program
176 services, as recommended by the evaluation conducted pursuant to
177 subsection (c) of this section and ordered by the court, to the
178 Department of Mental Health and Addiction Services, except that, if
179 such person is a veteran, the division may refer such person to the
180 Department of Veterans' Affairs or the United States Department of
181 Veterans Affairs, subject to the provisions of subdivision (2) of this
182 subsection. Placement in the drug education program pursuant to this
183 section shall not exceed one year. Persons receiving substance abuse
184 treatment program services in accordance with the provisions of this
185 section shall only receive such services at state licensed substance
186 abuse treatment program facilities that are in compliance with all state
187 standards governing the operation of such facilities, except that, if such
188 person is a veteran, such person may receive services from facilities
189 under the supervision of the Department of Veterans' Affairs or the
190 United States Department of Veterans Affairs, subject to the provisions
191 of subdivision (2) of this subsection. Any person who enters the
192 program shall agree: (A) To the tolling of the statute of limitations with
193 respect to such crime; (B) to a waiver of such person's right to a speedy
194 trial; (C) to complete participation in the ten-session drug intervention
195 program, fifteen-session drug intervention program or substance
196 abuse treatment program, as recommended by the evaluation
197 conducted pursuant to subsection (c) of this section, and ordered by
198 the court; (D) to commence participation in the drug education
199 program not later than ninety days after the date of entry of the court
200 order unless granted a delayed entry into the program by the court;
201 [and] (E) to perform not more than fifty hours of community service if
202 participation in the pretrial drug education program has previously
203 been invoked on the person's behalf and the charges dismissed; and (F)
204 upon completion of participation in the pretrial drug education
205 program, to accept (i) placement in a treatment program upon the
206 recommendation of a provider under contract with the Department of

207 Mental Health and Addiction Services or a provider under the
208 supervision of the Department of Veterans' Affairs or the United States
209 Department of Veterans Affairs, or (ii) placement in a treatment
210 program that has standards substantially similar to, or higher than, a
211 program of a provider under contract with the Department of Mental
212 Health and Addiction Services, if the Court Support Services Division
213 deems it appropriate. The Court Support Services Division shall
214 require as a condition of participation in the drug education program
215 that any person participating in the ten-session drug intervention
216 program or the substance abuse treatment program also participate in
217 the community service labor program, established pursuant to section
218 53a-39c, as amended by this act, for not less than five days; and that
219 any person participating in the fifteen-session drug intervention
220 program also participate in said community service labor program, for
221 not less than ten days.

222 (2) The Court Support Services Division may only refer a veteran to
223 the Department of Veterans' Affairs or the United States Department of
224 Veterans Affairs for the receipt of services under the program if (A) the
225 division determines that such services will be provided in a timely
226 manner under standards substantially similar to, or higher than,
227 standards for services provided by the Department of Mental Health
228 and Addiction Services under the program, and (B) the applicable
229 department agrees to submit timely program participation and
230 completion reports to the division in the manner required by the
231 division.

232 (e) If the Court Support Services Division informs the court that
233 such person is ineligible for the program and the court makes a
234 determination of ineligibility or if the program provider certifies to the
235 court that such person did not successfully complete the assigned
236 program and such person did not request, or the court denied,
237 reinstatement in the program under subsection (i) of this section, the
238 court shall order the court file to be unsealed, enter a plea of not guilty
239 for such person and immediately place the case on the trial list.

240 (f) If such person satisfactorily completes the assigned program,
241 such person may apply for dismissal of the charges against such
242 person and the court, on reviewing the record of such person's
243 participation in such program submitted by the Court Support
244 Services Division and on finding such satisfactory completion, shall
245 dismiss the charges. If such person does not apply for dismissal of the
246 charges against such person after satisfactorily completing the
247 assigned program, the court, upon receipt of the record of such
248 person's participation in such program submitted by the Court
249 Support Services Division, may on its own motion make a finding of
250 such satisfactory completion and dismiss the charges. Upon motion of
251 such person and a showing of good cause, the court may extend the
252 placement period for a reasonable period for such person to complete
253 the assigned program. A record of participation in such program shall
254 be retained by the Court Support Services Division for a period of ten
255 years from the date the court grants the application for participation in
256 the program.

257 (g) At the time the court grants the application for participation in
258 the pretrial drug education program, such person shall pay to the court
259 a nonrefundable program fee of three hundred fifty dollars if such
260 person is ordered to participate in the ten-session drug intervention
261 program or five hundred dollars if such person is ordered to
262 participate in the fifteen-session drug intervention program. If the
263 court orders participation in a substance abuse treatment program,
264 such person shall be responsible for the costs associated with such
265 program. No person may be excluded from any such program for
266 inability to pay such fee or cost, provided (1) such person files with the
267 court an affidavit of indigency or inability to pay, (2) such indigency or
268 inability to pay is confirmed by the Court Support Services Division,
269 and (3) the court enters a finding thereof. The court may waive all or
270 any portion of such fee depending on such person's ability to pay. If
271 the court finds that a person is indigent or unable to pay for a
272 treatment program, the costs of such program shall be paid from the

273 pretrial account established under section 54-56k. If the court denies
274 the application, such person shall not be required to pay the program
275 fee. If the court grants the application, and such person is later
276 determined to be ineligible for participation in such pretrial drug
277 education program or fails to complete the assigned program, the
278 program fee shall not be refunded. All program fees shall be credited
279 to the pretrial account established under section 54-56k.

280 (h) If a person returns to court with certification from a program
281 provider that such person did not successfully complete the assigned
282 program or is no longer amenable to treatment, the provider, to the
283 extent practicable, shall include a recommendation to the court as to
284 whether a ten-session drug intervention program, a fifteen-session
285 drug intervention program or placement in a substance abuse
286 treatment program would best serve such person's needs. The
287 provider shall also indicate whether the current program referral was
288 an initial referral or a reinstatement to the program.

289 (i) When a person subsequently requests reinstatement into a drug
290 intervention program or a substance abuse treatment program and the
291 Court Support Services Division verifies that such person is eligible for
292 reinstatement into such program and thereafter the court favorably
293 acts on such request, such person shall pay a nonrefundable program
294 fee of one hundred seventy-five dollars if ordered to complete a ten-
295 session drug intervention program or two hundred fifty dollars if
296 ordered to complete a fifteen-session drug intervention program, as
297 the case may be. Unless good cause is shown, such fees shall not be
298 waived. If the court grants a person's request to be reinstated into a
299 substance abuse treatment program, such person shall be responsible
300 for the costs, if any, associated with being reinstated into the treatment
301 program. All program fees collected in connection with a
302 reinstatement to a drug intervention program shall be credited to the
303 pretrial account established under section 54-56k. No person shall be
304 permitted more than two program reinstatements pursuant to this
305 subsection.

306 (j) The Department of Mental Health and Addiction Services shall
307 develop standards and oversee appropriate drug education programs
308 that it administers to meet the requirements of this section and may
309 contract with service providers to provide such programs. The
310 department shall adopt regulations, in accordance with chapter 54, to
311 establish standards for such drug education programs.

312 (k) Any person whose employment or residence or schooling makes
313 it unreasonable to attend a drug intervention program or substance
314 abuse treatment program in this state may attend a program in another
315 state that has standards similar to, or higher than, those of this state,
316 subject to the approval of the court and payment of the program fee or
317 costs as provided in this section.

318 Sec. 6. Section 54-56j of the general statutes is repealed and the
319 following is substituted in lieu thereof (*Effective from passage*):

320 (a) There shall be a school violence prevention program for students
321 of a public or private secondary school charged with an offense
322 involving the use or threatened use of physical violence in or on the
323 real property comprising a public or private elementary or secondary
324 school or at a school-sponsored activity as defined in subsection (h) of
325 section 10-233a. Upon application by any such person for participation
326 in such program, the court shall, but only as to the public, order the
327 court file sealed, provided such person states under oath, in open court
328 or before any person designated by the clerk and duly authorized to
329 administer oaths, under penalties of perjury that such person has
330 never had such [system] program invoked [in] on such person's behalf,
331 or that two or more years have passed since the date that any charge or
332 charges for which the program was invoked on such person's behalf
333 have been dismissed by the court and that such person has not been
334 convicted of an offense involving the threatened use of physical
335 violence in or on the real property comprising a public or private
336 elementary or secondary school or at a school-sponsored activity as
337 defined in subsection (h) of section 10-233a, and that such person has

338 not been convicted in any other state at any time of an offense the
339 essential elements of which are substantially the same as such an
340 offense.

341 (b) The court, after consideration of the recommendation of the
342 state's attorney, assistant state's attorney or deputy assistant state's
343 attorney in charge of the case, may, in its discretion, grant such
344 application. If the court grants such application, it shall refer such
345 person to the Court Support Services Division for assessment and
346 confirmation of the eligibility of the applicant. The Court Support
347 Services Division, in making its assessment and confirmation, may rely
348 on the representations made by the applicant under oath in open court
349 with respect to convictions in other states of offenses specified in
350 subsection (a) of this section. As a condition of eligibility for
351 participation in such program, the student and the parents or guardian
352 of such student shall certify under penalty of false statement that, to
353 the best of such person's knowledge and belief, such person does not
354 possess any firearms, dangerous weapons, controlled substances or
355 other property or materials the possession of which is prohibited by
356 law or in violation of the law. Upon confirmation of eligibility, the
357 defendant shall be referred to the Court Support Services Division for
358 evaluation and placement in an appropriate school violence
359 prevention program for one year.

360 (c) Any person who enters the program shall agree: (1) To the
361 tolling of the statute of limitations with respect to such crime, (2) to a
362 waiver of the right to a speedy trial, (3) to participate in a school
363 violence prevention program offered by a provider under contract
364 with the Court Support Services Division pursuant to subsection (g) of
365 this section, and (4) to successfully complete the assigned program.
366 The court may order the person to perform not more than twenty-five
367 hours of community services if the person is entering the program for
368 a second or subsequent time. If the Court Support Services Division
369 informs the court that the defendant is ineligible for the program and
370 the court makes a determination of ineligibility or if the program

371 provider certifies to the court that the defendant did not successfully
372 complete the assigned program, the court shall order the court file to
373 be unsealed, enter a plea of not guilty for such defendant and
374 immediately place the case on the trial list.

375 (d) The Court Support Services Division shall monitor the
376 defendant's participation in the assigned program and the defendant's
377 compliance with the orders of the court including, but not limited to,
378 maintaining contact with the student and officials of the student's
379 school.

380 (e) If such defendant satisfactorily completes the assigned program
381 and one year has elapsed since the defendant was placed in the
382 program, such defendant may apply for dismissal of the charges
383 against such defendant and the court, on reviewing the record of such
384 defendant's participation in such program submitted by the Court
385 Support Services Division and on finding such satisfactory completion,
386 shall dismiss the charges. If the defendant does not apply for dismissal
387 of the charges against the defendant after satisfactorily completing the
388 assigned program and one year has elapsed since the defendant was
389 placed in the program, the court, upon receipt of the record of the
390 defendant's participation in such program submitted by the Court
391 Support Services Division, may on its own motion make a finding of
392 such satisfactory completion and dismiss the charges.

393 (f) The cost of participation in such program shall be paid by the
394 parent or guardian of such student, except that no student shall be
395 excluded from such program for inability to pay such cost provided (1)
396 the parent or guardian of such student files with the court an affidavit
397 of indigency or inability to pay, and (2) the court enters a finding
398 thereof.

399 (g) The Court Support Services Division shall contract with service
400 providers, develop standards and oversee appropriate school violence
401 prevention programs to meet the requirements of this section.

402 (h) The school violence prevention program shall consist of at least
 403 eight group counseling sessions in anger management and nonviolent
 404 conflict resolution. In addition, the court may order any person
 405 participating in the program for a second or subsequent time to
 406 perform not more than twenty-five hours of community service.

407 Sec. 7. Subsection (a) of section 54-56l of the general statutes is
 408 repealed and the following is substituted in lieu thereof (*Effective from*
 409 *passage*):

410 (a) There shall be a supervised diversionary program for persons
 411 with psychiatric disabilities, developmental disabilities or persons who
 412 are veterans, who are accused of a crime or crimes or a motor vehicle
 413 violation or violations for which a sentence to a term of imprisonment
 414 may be imposed, which crimes or violations are not of a serious
 415 nature. For the purposes of this section, (1) "psychiatric disability"
 416 means a mental or emotional condition, other than solely substance
 417 abuse, that (A) has substantial adverse effects on the defendant's
 418 ability to function, and (B) requires care and treatment, [and] (2)
 419 "developmental disabilities" means a developmental disability as
 420 defined in 42 USC 15002(8) that (A) has substantial adverse effects on
 421 the defendant's ability to function, and (B) requires care and treatment,
 422 and (3) "veteran" means a person who is found, pursuant to subsection
 423 (d) of this section, to have a mental health condition that is amenable to
 424 treatment, and is (A) a veteran, as defined in subsection (a) of section
 425 27-103, or (B) eligible to receive services from the United States
 426 Department of Veterans Affairs pursuant to Title 38 of the United
 427 States Code.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	53a-39c
Sec. 4	<i>from passage</i>	54-56e(b)

Sec. 5	<i>from passage</i>	54-56i
Sec. 6	<i>from passage</i>	54-56j
Sec. 7	<i>from passage</i>	54-56l(a)

Statement of Purpose:

To revise statutory criteria applicable to the administration of the state's pretrial diversionary programs.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]